

Rules Amending Title 12
Hawaii Administrative Rules

(_____)

1. Chapter 6 of Title 12, Hawaii Administrative Rules, entitled "Employment and Training Fund" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 2

EMPLOYMENT SECURITY

CHAPTER 6

EMPLOYMENT AND TRAINING FUND

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Subchapter 1

GENERAL PROVISIONS

§12-6-1 Scope and purpose. (a) These rules implement section 383-128, HRS, (Act 68, SLH 1991) which establishes an employment and training fund to train and maintain a skilled, competitive workforce.

(b) As cited in section 383-128, HRS, funds may be used for:

- (1) The operation of the Hawaii state employment service for which no federal funds have been allocated;
- (2) Business-specific training programs to create a more diversified job base and to carry out the purposes of the new industry

training program pursuant to section 394-8, HRS;

- (3) Industry or employer-specific training programs where there are critical skill shortages in high growth occupational or industry areas;
- (4) Training and retraining programs to assist workers who have become recently unemployed or are likely to be unemployed;
- (5) Programs to assist residents who do not otherwise qualify for federal or state job training programs to overcome employment barriers; and
- (6) Training programs to provide job-specific skills for individuals in need of such assistance to improve career employment prospects. [Eff: 5/4/92; comp]
(Auth: HRS §§383-92, 383-128) (Imp: HRS §383-128)

§12-6-2 Definitions. As used in this chapter:
"Applicant" means an organization or individual that responds to a request for proposals for the macro or micro training programs under this chapter.

"Auxiliary services" means training- and employment- related activities such as educational and vocational assessment, counseling, and job development and placement.

"Business-specific training" and "industry or employer-specific training" means training which is designed for one employer, an employer group, or an industry.

"Capacity-building" means the enhancement of a public or private sector organization's ability to develop and implement training and training-related programs through activities such as train-the-trainer programs; staff, instructor, supervisory, mid-level management, or supervisory training; provision of instructional equipment and other training resources; curriculum development; information development and delivery; and development of collaborative efforts

among business and industry, labor, education, nonprofit, and employment/training organizations.

"Critical skill shortages in high growth occupational or industry areas" means shortages in either high growth or demand occupations which are determined by the director on the basis of research data, employer surveys, agency studies, plans, and similar information.

"Department" means the department of labor and industrial relations.

"Director" means the director of labor and industrial relations.

"Employer" means an organization which is registered with the department for unemployment insurance purposes and has a current department of labor employer identification number .

"Employer groups" means professional or trade associations representing business and industry.

"In-kind contributions" means costs incurred by an employer that are attributable to a training program or project such as classroom or workplace facilities, training equipment or supplies, instructors, and supervisory time.

"Macro" means innovative or customized training programs designed and developed by business and industry; which may include, but not be limited to, curriculum development, train-the-trainer activities, training for a particular industry, or a compilation of training activities, which may include upgrade training, entry-level skills training, job-specific training, new skills training, and retraining.

"Micro" means training that is already available within the community to businesses and individuals.

"Nonprofit corporation or organization" means an organization determined to be exempt from payment of the federal income tax by the Internal Revenue Service.

["Support services" means activities which directly support individuals enrolled in training programs such as transportation, equipment, or child care costs.]

"Supplanting" means to subsidize training that is directly related to the goods and services that an employer provides to the public.

"Training" means any activity which will prepare a person for an occupation and may include upgrade training, pre-employment and entry-level skills training, job-specific skills training, new skills training, and retraining.

"Training provider or vendor" means an organization contracted by the department to provide training services under this chapter and may include public sector agencies, labor organizations, private sector entities, and nonprofit organizations.

"Train-the-trainer" means an instructional program provided to individuals who, in turn, will train others. [Eff: 5/4/92; am and comp
] (Auth: HRS §§383-92, 383-128)
(Imp: HRS §383-128)

§§12-6-3 to 12-6-5 (Reserved)

Subchapter 2

Program Operations

§12-6-6 Training [activities]. (a) [Training proposals] Macro training should be developed on the basis of:

- (1) Training needs that are identified by the director from sources such as surveys, reports, studies, plans, and discussions with public and private sector agencies, employers, employer organizations, labor organizations, and nonprofit organizations.
- (2) Industries that are included in the State's economic development strategy, as recommended by the department of business, economic development and tourism.

- (3) Community needs identified by county
[private industry councils,] workforce
investment boards, employer organizations,
industry or trade associations, labor
organizations, and similar organizations.
- (b) [These proposals] Macro and micro training
may address any of the following activities:
- (1) Pre-employment and entry level skills
training;
 - (2) Upgrade training;
 - (3) Retraining;
 - (4) New skills training; or
 - (5) Capacity-building.
- (c) To stimulate the development of innovative
training programs, the department will solicit long-
term training proposals that demonstrate new or
different ways to develop or improve workforce skills,
and have the potential for permanent establishment by
the recipient organizations. These programs may be
funded on an annual basis and may receive continued
funding upon annual review and approval by the
department. [Eff: 5/4/92; am and comp]
(Auth: HRS §§383-92, 383-128) (Imp: HRS §383-128)

§12-6-7 New industry training. Training
programs may be proposed to assist new or expanding
industries. As cited in section 394-9, HRS, businesses
in this category shall include those engaged in
research, development, manufacturing, production, or
delivery of services in growth sectors such as, but
not limited to, electronics, software,
instrumentation, biotechnology, renewable energy,
telecommunications, computers, mariculture,
aquaculture, tropical agriculture, Hawaiian natural
products, and space applications including
astronomical research. [Eff: 5/4/92; comp
] (Auth: HRS §§383-92, 383-128, 394-9)
(Imp: HRS §§383-128, 394-8, 394-9)

§12-6-8 Application for funds. Training providers, employers, or employer groups shall apply to the department for funds to operate programs or provide training services authorized under this chapter on forms prescribed by the department. [Eff 5/4/92; comp] (Auth: HRS §§383-92, 383-128) (Imp: HRS § 383-128)

§12-6-9 Review and approval. (a) The director shall use any of the following applicable criteria in reviewing and approving proposals under this chapter, the extent to which:

- (1) The objectives of section 12-6-1 are addressed.
- (2) The program is based on a collaborative agreement among training providers, employers, or other organizations to benefit an industry, a group of businesses, a geographical area, or a specified group of persons or workers.
- (3) The program has received employer input and approval.
- (4) The employment and training concerns of small businesses are addressed.
- (5) The training will help unemployed persons and persons with employment barriers who are not enrolled in other job training programs gain job skills in occupations leading to greater economic self-sufficiency or will assist workers who desire to pursue new job skills in keeping with the demands of the labor market.
- (6) The program does not supplant or duplicate ongoing programs.
- (7) The program demonstrates innovative ways to achieve training objectives.
- (8) Capacity-building projects are related to specific training objectives.
- (9) The program has measurable, results-oriented objectives such as placement in employment or in continuing education or training, and

attainment of educational or vocational skills performance levels; and shows how they will be achieved and evaluated.

- (10) The training provider is qualified and possesses the proper credentials, demonstrates satisfactory past performance, and is financially able to conduct the proposed training.
- (11) Program costs are reasonable and appropriate.
- (12) Existing programs are being used to provide auxiliary services.

(b) In addition to the criteria set forth above, the director may prescribe policies and guidelines and other requirements to administer the micro training program.

(c) Notwithstanding the provisions as provided in subsection (a), to qualify as an authorized training vendor for the micro training program, an eligible applicant shall be licensed to do business in the State of Hawaii for at least one year. [Eff: 5/4/92; am and comp] (Auth: HRS §§383-92, 383-128) (Imp: HRS §383-128)

§12-6-10 Auxiliary services. (a) The funding of auxiliary services shall be restricted to activities which assist the department, training providers, and employers in meeting the objectives of section 12-6-1.

(b) Funding of these services may not be approved if they are available through established agencies or programs. [Eff 5/4/92; comp] (Auth: HRS §§383-92, 383-128) (Imp: HRS §383-128)

[§12-6-11 Support Services. (a) To assist persons who may not be able to enroll in or complete a job training program due to economic circumstances, the department may approve funding for support services.

(b) Funds may be authorized to assist persons to offset the costs of approved support services.

(c) Funding of support services for a training proposal shall not exceed five per cent of the total amount of funds approved for that proposal.]

[Eff: 5/4/92; R] (Auth: HRS §§383-92, 383-128) (Imp: HRS §383-128)]

§12-6-12 [Program limitations.] Program limitations for macro training. (a) Training proposals shall:

- (1) Be limited to \$100,000.00 and one year in length; and
- (2) Designate a single recipient of the program funds; provided that subcontracting of funds shall be authorized only under written authorization of the department.

(b) Upon annual review, the department may renew projects for an additional year of funding upon application by the training provider, employer, or employer group.

(c) Upon good cause shown by the training provider, employer, or employer group, the director may make exceptions to the program limitations stated in subsection (a). [Eff: 5/4/92; am and comp

] (Auth: HRS §§383-92, 383-128) (Imp: HRS §383-128)

§12-6-13 Contributions to program costs. The director [may] shall require employers or employer groups who receive training assistance authorized under this chapter to contribute [up to] fifty per cent of the amount requested in cash or in-kind contributions.

- (1) The estimated monetary value of each in-kind contribution shall be listed on the application form.
- (2) Matching monetary contributions may be required for programs such as:

- (A) Training authorized under section 12-6-1
and 12-6-7;
- (B) Capacity-building; and
- (C) [Training] Micro training that helps a
single employer. [Eff: 5/4/92; am and
comp] (Auth: HRS §§383-
92, 383-128) (Imp: HRS §383-128)

[§§12-6-14 to 12-6-15 (Reserved)]

§12-6-14 Funding limitations. (a) The director
may establish limitations on the amount of funds
provided to vendors, employers, and employees.

(b) Funds will not be provided for the training
of federal, state, or county employees. [Eff and comp:
] (Auth: HRS §§383-92, 383-128)
(Imp: HRS §383-128)]

§12-6-15 (Reserved)

Subchapter 3

Program Management

§12-6-16 Administration. (a) The director is
responsible for operations and programs funded by the
employment and training fund.

(b) The director may appoint an advisory
committee that includes employers, labor organization
representatives, and training providers for the
purpose of:

- (1) Reviewing programs on a quarterly basis; and
- (2) Submitting annual recommendation for future
priorities and goals. [Eff: 5/4/92; comp
] (Auth: HRS §§383-92, 383-
128) (Imp: HRS §383-128)

§12-6-17 Program funds. (a) The department shall administer program funds in accordance with state laws, administrative rules, policies, and procedures.

(b) Training providers and employers shall comply with all applicable federal and state laws in the operation of programs funded under this chapter. [Eff: 5/4/92; comp] (Auth: HRS §§383-92, 383-128) (Imp: HRS §383-128)

§12-6-18 Procurement of employment and training services. (a) The department may conduct employment and training programs or contract with public and private sector agencies, nonprofit organizations, employers, or labor organizations to develop and implement programs authorized by this chapter.

(b) Requests for funding assistance shall be sent to the director in accordance with section 12-6-8.

(c) The department shall determine program priorities on the basis of criteria in sections 12-6-6 and 12-6-9.

(d) Employment and training services shall be procured in accordance with the department's purchasing policies and procedures. [Eff: 5/4/92; comp] (Auth: HRS §§383-92, 383-128) (Imp: HRS §383-128)

§12-6-19 Reports and monitoring. (a) Training providers and employers who receive macro funds under this chapter shall submit interim status reports and a final report as specified in the contract or agreement.

- (1) The interim reports shall contain information that will enable the department to determine the extent to which the project's objectives are being achieved and to determine the financial status of the project.
- (2) The final report shall contain information on the accomplishments of the project, summary of costs, and an evaluation of the

project that includes recommendations for future courses of action.

(b) The department shall monitor the projects; interim reports may be used to determine the need for on-site visits or periodic meetings.

(c) Training providers or vendors who provide micro training shall submit interim status reports to determine whether individual trainees met the objectives of section 12-6-1. [Eff: 5/4/92; am and comp] (Auth: HRS §§383-92, 383-128) (Imp: HRS §383-128)

§12-6-20 Sanctions for nonperformance. (a) The director may cancel the contract for nonperformance by the training provider or employer [.] unsatisfactory performance by the contractor or training provider, such as frequent delays or cancellations of training activities; or failing to perform any of its contractual obligations. Sanctions imposed by the director may include barring the training provider or employer from participating in the program for specified periods of time.

(b) Action may be initiated for the recoupment of funds and other appropriate remedies. [Eff: 5/4/92; am and comp] (Auth: HRS §§383-92, 383-128) (Imp: HRS §383-128)

§12-6-21 Program evaluation. The department shall evaluate the program to determine its overall effectiveness. The evaluation may be performed by the department or another organization under a contractual agreement. [Eff: 5/4/92; comp] (Auth: HRS §§383-92, 383-128) (Imp: HRS §383-128)

§12-6-22 Collective bargaining agreement. When applicable, the application for funds shall contain an affirmation that the proposed training is consistent with the provisions of a current collective bargaining

agreement." [Eff: 5/4/92; comp] (Auth:
HRS §§383-92, 383-128) (Imp: HRS §383-128)

2. Material, except source notes, to be repealed
is bracketed. New material is underscored.

3. Additions to update source notes to reflect
these amendments and compilation are not underscored.

4. These amendments to and compilation of
chapter 12-6, Hawaii Administrative Rules shall take
effect ten days after filing with the Office of the
Lieutenant Governor.

I certify that the foregoing are copies of the
rules, drafted in the Ramseyer format pursuant to the
requirements of section 91-4.1, Hawaii Revised
Statutes, which were adopted on (_____) and
filed with the Office of the Lieutenant Governor.

LEONARD AGOR
Director of Labor and
Industrial Relations

APPROVED AS TO FORM:

Deputy Attorney General